

APPEAL NO. 171766  
FILED SEPTEMBER 7, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 29, 2017, in (city), Texas, with (administrative law judge) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the (date of injury), compensable injury does not extend to a 1 mm disc bulge at L4-5 and L5-S1, annular fissure in the left paracentral segment of the disc bulge at L5-S1, tibiotalar joint effusion, or mild arthrosis of the talonavicular joint; (2) the appellant (claimant) reached maximum medical improvement (MMI) on April 6, 2016; and (3) the claimant's impairment rating (IR) is 5%.

The claimant appealed all of the hearing officer's determinations, contending that the evidence established that the compensable injury extends to the disputed conditions and that she has not reached MMI. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

**DECISION**

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that the carrier has accepted an (date of injury), compensable injury in the nature of a lumbar sprain/strain, right hip sprain/strain, right knee sprain/strain, right ankle sprain/strain, and right foot sprain/strain, and that the date of statutory MMI is August 13, 2017. The claimant testified she was injured when her right foot slipped and became stuck between the door and interior of a machine.

**EXTENT OF INJURY**

The hearing officer's determination that the (date of injury), compensable injury does not extend to a 1 mm disc bulge at L4-5 and L5-S1, annular fissure in the left paracentral segment of the disc bulge at L5-S1, tibiotalar joint effusion, or mild arthrosis of the talonavicular joint is supported by sufficient evidence and is affirmed.

**MMI**

The hearing officer's determination that the claimant reached MMI on April 6, 2016, is supported by sufficient evidence and is affirmed.

**IR**

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (Division) shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides, in pertinent part, that the assignment of an IR shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

(Dr. D) is the designated doctor appointed by the Division to determine MMI and IR. Dr. D examined the claimant on August 8, 2016, and in a Report of Medical Evaluation (DWC-69) certified that the claimant reached MMI on April 6, 2016, and assigned a 5% IR. However, we note that in his attached narrative report Dr. D assigned a 7% IR. Dr. D placed the claimant in Diagnosis-Related Estimate (DRE) Lumbosacral Category II: Minor Impairment for 5% impairment. Dr. D noted in his narrative report that he relied upon the range of motion (ROM) measurements taken in an April 6, 2016, examination conducted by (Dr. O), the post-designated doctor required medical examination doctor. Using those measurements Dr. D assigned 2% impairment for loss of ROM of the claimant's right ankle. Using the Combined Values Chart on page 322 of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides), Dr. D in his narrative report assigned a total IR of 7%. Dr. D noted that the claimant's ROM for the right hip, knee, and foot were all within normal limits.

In Section 3.2 entitled "The Lower Extremity," page 3/75, the AMA Guides provides, in part, that:

If the patient has several impairments of the same lower extremity part, such as the leg, or impairments of different parts, such as the ankle and a toe, the whole-person estimates for the impairments are *combined* (Combined Values Chart, p. 322). If both extremities are impaired, the impairment of each should be evaluated and expressed in terms of the whole person, and the two percents should be *combined* (Combined Values Chart, p. 322).

In Section 3.2e entitled "[ROM]," page 3/77, the AMA Guides provides, in part, that "[e]valuating permanent impairment of the lower extremity according to its [ROM] is a suitable method." Section 3.2e does not require that a certifying doctor must only use the most severe impairment for an individual direction of motion within the same table

(Tables 40 through 43). See *also* Appeals Panel Decision (APD) 110741, decided July 25, 2011.

Dr. D combined impairment for two planes of motion for ankle motion impairment provided in Table 42 on page 3/78 of the AMA Guides and both planes of motion for hindfoot impairment provided in Table 43 on page 3/78 of the AMA Guides. However, Dr. D's 2% for the claimant's right ankle contains a mathematical error. In his narrative report Dr. D noted 30° of ankle plantar flexion results in 0% impairment; 20° of inversion results in 1% impairment; 10° of eversion results in 1% impairment; and neutral dorsiflexion results in 0% impairment. Table 42 provides that neutral dorsiflexion results in 3% impairment, not 0% impairment as assigned by Dr. D.

The Appeals Panel has previously stated that, where the certifying doctor's report provides the component parts of the rating that are to be combined and the act of combining those numbers is a mathematical correction which does not involve medical judgment or discretion, the Appeals Panel can recalculate the correct IR from the figures provided in the certifying doctor's report and render a new decision as to the correct IR. See APD 152464, decided February 17, 2016; APD 121194, decided September 6, 2012; APD 041413, decided July 30, 2004; APD 100111, decided March 22, 2010; and APD 101949, decided February 22, 2011. Under the facts of this case, the certifying doctor's assigned IR can be mathematically corrected based on the documented measurements for the right ankle.

Combining 3% for neutral dorsiflexion, 1% for inversion, and 1% for eversion results in 5% impairment for the claimant's right ankle rather than the 2% impairment assigned by Dr. D. Combining 5% impairment for the right ankle with 5% impairment for the lumbar spine results in 10% whole person impairment for the compensable injury rather than the 5% impairment contained on the DWC-69 or the 7% impairment contained in Dr. D's narrative report.

The hearing officer found that the preponderance of the medical evidence is not contrary to Dr. D's assigned IR, and after a mathematical correction that finding is supported by the evidence. Accordingly, we reverse the hearing officer's determination that the claimant's IR is 5% and we render a new decision that the claimant's IR is 10%, as mathematically corrected.

### **SUMMARY**

We affirm the hearing officer's determination that the (date of injury), compensable injury does not extend to a 1 mm disc bulge at L4-5 and L5-S1, annular fissure in the left paracentral segment of the disc bulge at L5-S1, tibiotalar joint effusion, or mild arthrosis of the talonavicular joint.

We affirm the hearing officer's determination that the claimant reached MMI on April 6, 2016.

We reverse the hearing officer's determination that the claimant's IR is 5% and we render a new decision that the claimant's IR is 10%, as mathematically corrected.

The true corporate name of the insurance carrier is **SERVICE LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH KELLEY-GRAY, PRESIDENT  
6907 CAPITOL OF TEXAS HIGHWAY NORTH  
AUSTIN, TEXAS 78755.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Margaret L. Turner  
Appeals Judge